IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-3-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.49001 of 2006 and M.P.No. 2 of 2006

P. Samraj ... Petitioner

Vs.

1. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.

2. R.Riazuddin ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the first respondent in Rc.No.57816/Estt.1(2)/2006-2/CPO No.2809/2006, dated 9.11.2006 and quash the same inasmuch as the transfer of the petitioner is concerned, consequently directing the first respondent to transfer the second respondent to some other station.

For Petitioner : Mr.E.Martin Jayakumar

For Respondent No.1 : Mr.P.Subramanian,
Government Advocate

O R D E R

By consent of both sides, the writ petition itself is taken up for final disposal.

2. Petitioner seeks to quash the order of the first respondent dated 9.11.2006 transferring the petitioner from T-9 Pattabiram Police Station to R-6 Kumaran Nagar (Crime) Police Station, within the Chennai City Police limits.

3. The brief facts necessary for disposal of the writ petition are that the petitioner was originally appointed as Sub-Inspector of Police in the year 1989 and subsequently promoted as Inspector of

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Police and he was having total service of about 19 years. By the impugned order, petitioner was transferred from T-9 Pattabiram Police Station to R-6 Kumaran Nagar (Crime) Police Station, Chennai, within three months. The said order is challenged on the ground that only to accommodate the second respondent, who was promoted as Inspector of Police from the cadre of Sub-Inspector of Police, the order of transfer is made. It is also stated in the affidavit that the petitioner is transferred 5th time in the year 2006 to various police stations and the transfer is made during non-transferable period.

4. The first respondent filed counter affidavit wherein the allegations made by the petitioner that only to accommodate the second respondent petitioner was transferred, is denied and by order dated 9.11.2006, 52 Inspectors of Police were re-shuffled within Chennai City Police and the petitioner is one among them. The transfers were effected in order to cope up with the annexation of erstwhile Chengalpet East District with the Chennai Metropolitan Police; to meet out the safety and security of the Public; and to revamp the growing necessity of the Chennai City Police. It is also stated in the counter affidavit that from 1994 as Sub-Inspector of Police and thereafter as Inspector of Plice, petitioner is serving in and around the Chennai City for the past 13 years. Prior to posting at T-9 Pattabiram Police Station, he was serving in S-8 Adambakkam Police Station from 1.9.2004 to 8.8.2006 and prior to that he was serving in T-3 Korattur Police Station, H-5 New Washerman (Crime) Police Station, and when he was posted at Adyar (Crime) Police Station on 8.8.2006, petitioner requested to post him at T-9 Pattabiram Police Station and therefore the said transfer order was cancelled on 9.8.2006 at his request. It is also stated in the counter affidavit that the petitioner while working in T-9 Pattabiram Police Station, he failed to manage the station satisfactorily and failed to handle investigation of criminal cases satisfactorily and the details are stated in paragraph 6 of the counter affidavit which reads as follows,

> "..... It is submitted, that though T9 Pattabiram Police Station is relatively light station, he has failed to manage the station satisfactorily. There were complaints of bootlegging and gambling in the station limits. He did not handle the investigation of criminal cases satisfactorily. For example a case in Cr.No.1348/2006 u/s.174 Cr.PC was registered on 26.9.2006, Five members of one family viz. 1.Joshua Jayaraman, his wife 2) Gowri, 3) Sivaprakasam, 4) Margret Manimegalai, W/o.Sivaprakasam, and their son, 5) Arputharaj, died of poison for domestic reason. Inspector who took up this case has not written CD's statements and the Inquest reports etc. The same were not

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sent to superior officer as well as to executive magistrate. Similarly he has registered a case in T9 P.S. Cr.No.1535/06 U/s.20(b) NDPS Act against 1) Paramasivam, A/49, S/o.Cheriyan, No.4/25 B, Kamarajar Street, Nemilichery, Pattabiram, on 2.11.06. No CD's written, no progress made in this case also after remand. On 20.9.06 at 08.00 hrs he has registered a cases in T-9 P.S. C.No.1320/06 u/s.279, 304(A) IPC in which one Vasantha Kumar, A/19, S/o.Rajendran, No.7, Arumugam Street, Jothi Ramalingam Nagar, Chennai-33, died on road accident. In this case also Inspector has not even prepared inquest report statements and written CD's. His investigation in all the above and many other cases are por, improper and below satisfaction for which charges are being framed against him. The T9 Pattabiram Police Station is a sub-urban police station, which requires some young direct recruit officers, in order to infill confidence in the minds of the station staff as well as the public, to cope up with the increasing demand in containing the crime rate int he sub-urban. It is therefore submitted that the posting of R.Riazuddin to T9 Pattabiram PS, is only on the above grounds, and not on any mala fide as alleged by the writ petitioner."

It is also stated in the counter affidavit that orders of transfer are being made according to the administrative exigency and there is no mala fide in transferring the petitioner from Pattabiram Police Station to Kumaran Nagar Police Station, which is also a nearby place only few kilometers away from Pattabiram Police Station and the petitioner has also joined at R-6 Kumaran Nagar Police Station on 15.1.2007.

5. The learned counsel for the petitioner argued that the petitioner is transferred only to accommodate the second respondent and he was transferred within three months from the date of his earlier transfer and it is made during non-transferable period and therefore the transfer order is unsustainable.

6. The learned Government Advocate appearing for the first respondent submitted that the police force is a disciplined force and in view of the administrative exigency in annexing the then Chengalpet East District with the Chennai Metropolitan Police limits, shuffling of Police personnel were made and petitioner is one among the 52 Police Officers transferred and there is no mala fide as alleged. The petitioner's performance is also not satisfactory with regard to his station management, investigation of criminal cases, particularly in

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preparing the inquest report, obtaining statements and investigations. The T-9 Pattabiram Police Station being a sub-urban police station, which requires young officers to instil confidence in the minds of the station staff as well as the public in containing crime rate and therefore the petitioner's transfer is justifiable.

7. I have considered the rival submissions of the learned counsel for the petitioner as well as learned Government Advocate.

8. The point in issue is whether the petitioner has any right to pray that he should be retained in the T9 Pattabiram Police Station.

9. It is not in dispute that the petitioner is in transferable post. Transfer is an incident of service, is not in dispute. Posting a person, particularly a police Officer in a particular station, depends upon various factors, depending on administrative exigencies. The performance of the petitioner in maintaining station, investigation of cases, etc., are not upto the mark. Shabby investigation of criminal cases is a serious lapse on the part of the investigating officer and it will have serious repercussions and supervising the same is definitely a part of police administration. Hence the first respondent is right in contending that the petitioner is transferred based on his performance and on administrative exigency the second respondent is posted as Inspector of Police in T-9 pattabiram Police Station.

10. The contention of the petitioner that he is transferred in non-transferable period is also not acceptable since the norms of the transfer are only guidelines, which has no binding effect.

11. The scope of judicial review in the matter of transfer is well settled by the Honourable Supreme Court.

(a) The Honourable Supreme Court in the decision reported in AIR 1993 SC 2444 (Union of India v. S.L.Abbas) in paragraph 7 held as follows,

> "7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is not doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines

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say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

(b) In AIR 1993 SC 2486 (State of Punjab v. Joginder Singh Dhatt), in paragraph 3, the Honourable Supreme Court held thus,

"3. We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused."

(c) in (2001) 8 SCC 574 (National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan), wherein at para 5, the Honourable Supreme Court held as follows,

"5. ..... It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. ..... "

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12. The power of the Court while dealing with the transfer order is explained by the Honourable Supreme Court in the following decisions.

(i) In (2004) 7 SCC 405 (State of U.P. And another v. Siya Ram and another), at paragraph 5 the Honourable Supreme Court held thus,

> "5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd v. Shri Bhagwan ((2001) 8 SCC 574)*."

(ii) In (2004) 12 SCC 299 (Kendriya vidyalaya Sangathan v Damodar Prasad Pandey and others), in paragraph 4 the Honourable Supreme Court observed as follows,

> "4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 169).* Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the

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court cannot interfere with it (see *Union of India v. S.L.Abbas, (1993) 4 SCC 357*). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India v. Janardhan Debanath, (2004) 4 SCC 245*, it was observed as follows (SCC p.250, para 9)

> "No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574*."

(iii) I have also taken similar view in a transfer matter in the decision reported in (2006) 2 MLJ 474 (Chinnasamy v. District Collector, Salem) and also in W.P.No.4511 of 2006 dated 25.8.2006 (Dr.T.Mytle Grace v. Tamil Nadu Agricultural University, Coimbatore and Others).

13. Following the above cited decisions and having regard to the facts in this case, I am of the view that the petitioner has no legal right to contend that he shall not be transferred and he should be permitted to work in the same T-9 Pattabiram Police Station.

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14. There is no merit in the writ petition and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr

To

The Commissioner of Police, Office of the Commissioner of Police, Greater Chennai, Egmore, Chennai - 600 008.

+1cc to Govt. Pleader Sr 16996

SR (CO)
km/22.3.

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